

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

RICHARD L. BARTA,	)	
	)	
Petitioner,	)	
	)	
-vs-	)	Case No. CIV-14-1334-F
	)	
BRUCE HOWARD, Warden,	)	
Howard McLeod Correctional	)	
Center,	)	
	)	
Respondent.	)	

**ORDER**

United States Magistrate Judge Shon T. Erwin issued a Report and Recommendation on June 11, 2015, wherein he recommended that the petition of petitioner, Richard L. Barta, for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed as untimely.


Presently before the court is petitioner's timely objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the matter. Having done so, the court concurs with the recommended ruling. The court further finds that petitioner has failed to demonstrate circumstances exist for equitable tolling. Therefore, the court accepts, adopts and affirms the recommended ruling of dismissing petitioner's § 2254 habeas petition as untimely.

Rule 11 of the Rules Governing Section 2254 cases in the United States District Courts provides that the court must issue or deny a certificate of appealability when it enters a final order adverse to the petitioner. Section 2253(c) of Title 28 of the United States Code instructs that the court may issue a certificate of appealability

“only if the [petitioner] has made a substantial showing of the denial of a constitutional right,” and the court indicates “which specific issue or issues satisfy [that] showing.” 28 U.S.C. § 2253(c)(2) and (3). A petitioner can satisfy that standard by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. Slack v. McDaniel, 529 U.S. 473, 484 (2000) (citing Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). Because the court’s ruling in the instant case was based on procedural grounds, the petitioner must demonstrate that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack, 529 U.S. at 484. After considering the record in this case, the court concludes that a certificate of appealability should not issue as the petitioner has failed to satisfy the second prong of the required showing, *i.e.*, the court’s procedural ruling is debatable or incorrect. Therefore, a certificate of appealability is denied.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin (doc. no. 9) is **ACCEPTED, ADOPTED** and **AFFIRMED**. Petitioner, Richard L. Barta’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED** as untimely. A certificate of appealability is **DENIED**. Judgment shall issue forthwith.

DATED June 30, 2015.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE